# United States Department of Labor
# Employees' Compensation Appeals Board

| | | |
|---|---|---|
| **E.W., Appellant** | ) | |
| | ) | **Docket No. 13-2007** |
| **and** | ) | **Issued: February 5, 2014** |
| | ) | |
| **U.S. POSTAL SERVICE, POST OFFICE, Jamaica, NY, Employer** | ) | |

*Appearances:*
*Appellant, pro se*
*Office of Solicitor,* for the Director

*Case Submitted on the Record*

## DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

### ***JURISDICTION***

On August 29, 2013 appellant filed a timely appeal from a June 28, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[2]

### ***ISSUE***

The issue is whether appellant met his burden of proof to establish a traumatic injury in the performance of duty on April 25, 2013.

[1] 5 U.S.C. § 8101 *et seq.*

[2] Appellant submitted new evidence on appeal. The Board lacks jurisdiction to review evidence for the first time on appeal.[2] Appellant may submit this or other new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

## ***FACTUAL HISTORY***

On May 1, 2013 appellant, then a 49-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging injury to his left shoulder and arm in the performance of duty on April 25, 2013. He stated that picking up customers' "click and ship" packages may have caused his injury.

In a statement dated April 25, 2013, appellant noted that his left shoulder was sore, but manageable, but when he finished his route, he had to retrieve a customer's "click and ship" package. When he reached out to pick up the item, his arm became painful to move and immovable.

An April 25, 2013 duty status report, with an illegible signature, noted that appellant had certain work restrictions. In duty status reports dated April 30 and May 6, 2013, with illegible signatures, it was listed that appellant could not return to work.

In a Form CA-16 authorization for examination and/or treatment dated April 30, 2013, a physician with an illegible signature diagnosed appellant with strain.[3]

By letter dated May 24, 2013, OWCP advised appellant that the evidence of record was insufficient to support his claim. It afforded him 30 days to submit additional evidence and respond to its inquiries, noting that the signatures on the submitted medical reports were illegible. Further, physician's assistants, nurses and nurse practitioners did not qualify as a physician under FECA.

In a duty status form report dated May 17, 2013, Ronald Flood, a physician's assistant, noted that appellant could not return to work.

By letter dated May 22, 2013, the Department of Veterans Affairs informed appellant that he was scheduled to have a magnetic resonance imaging scan on June 6, 2013.

In a certification of health care provider (Form WH-380-E) dated May 23, 2013, Mr. Flood described the history of appellant's condition, the dates he would be incapacitated for work and his course of treatment.

On May 31, 2013 appellant signed and returned the questionnaire containing OWCP's inquiries, but did not provide responses to them. He also submitted an undated list of his active and expired medications on June 11, 2013.

By decision dated June 28, 2013, OWCP denied appellant's claim. It found that he had not submitted any medical evidence from a qualified physician and that the evidence in his case was from a physician's assistant.

[3] The record contains a Form CA-16 signed by the employing establishment official. When the employing establishment properly executes a Form CA-16 which authorizes medical treatment as a result of an employee's claim for an employment-related injury, Form CA-16 creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. *See* 20 C.F.R. § 10.300(c); *Tracy P. Spillane*, 54 ECAB 608 (2003).

## ***LEGAL PRECEDENT***

An employee seeking benefits under FECA[4] has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an "employee of the United States" within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury[5] was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.[6]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. A fact of injury determination is based on two elements. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury. An employee may establish that the employment incident occurred as alleged but fail to show that his or her condition relates to the employment incident.[7]

Whether an employee sustained an injury in the performance of duty requires the submission of rationalized medical opinion evidence.[8] The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.[9] The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.[10]

## ***ANALYSIS***

Appellant alleged that, on April 25, 2013, he sustained an injury to his left shoulder and arm in the performance of duty. The Board finds that he did not submit sufficient medical

[4] 5 U.S.C. §§ 8101-8193.

[5] OWCP's regulations define a traumatic injury as a condition of the body caused by a specific event or incident, or series of events of incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected. 20 C.F.R. § 10.5(ee).

[6] *T.H.*, 59 ECAB 388, 393 (2008); *see Steven S. Saleh*, 55 ECAB 169, 171-72 (2003); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[7] *Id*. *See Shirley A. Temple*, 48 ECAB 404, 407 (1997); *John J. Carlone* 41 ECAB 354, 356-57 (1989).

[8] *See J.Z.*, 58 ECAB 529, 531 (2007)*; Paul E. Thams*, 56 ECAB 503, 511 (2005).

[9] *I.J.*, 59 ECAB 408, 415 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[10] *James Mack*, 43 ECAB 321, 329 (1991).

evidence from a physician to establish that a medical condition had been diagnosed in connection with this incident.

In support of his claim, appellant submitted reports from Mr. Flood, a certified physician's assistant. A physician's assistant does not qualify as a physician as defined under FECA. Their reports do not qualify as probative medical evidence supportive of a claim for federal workers' compensation, unless countersigned by a physician.[11] Mr. Flood's reports were not countersigned by a physician. Therefore, the reports do not constitute probative medical evidence and fail to establish that appellant sustained injury to his left shoulder or arm, as claimed.

Appellant also submitted standardized form reports that were illegibly signed, such that the author could not be determined. Consequently, these reports are of no probative value as it cannot be discerned whether a physician signed the reports.[12]

Because appellant did not submit rationalized medical opinion evidence, containing a diagnosis from a physician, in support of his claim, the Board finds that he has failed to meet his burden of proof to establish that he was diagnosed with a condition as a result of the April 25, 2013 employment incident.

## ***CONCLUSION***

The Board finds that appellant has not met his burden of proof to establish an injury in the performance of duty on April 25, 2013.

[11] *See* 5 U.S.C. § 8101(2); *Lyle E. Dayberry*, 49 ECAB 369, 372 (1998) (regarding physicians' assistants).

[12] *See Merton J. Sills*, 39 ECAB 572, 575 (1988); *see also Sheila A. Johnson*, 46 ECAB 323, 327 (1994).

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the June 28, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 5, 2014
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board